

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

CAROL P. HILL

Petitioner.

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CHARGE NO.: 2009CF0538

EEOC NO.: 21BA82922

ALS NO.: 09-0471

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman and Yonnie Stroger presiding, upon Carol P. Hill's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CF0538; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Petitioner's Reply, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On August 25, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that the City of Chicago, Department of Aviation, (the "Employer") suspended her because of her disability (Count A), her sex (Count B), and in retaliation for having opposed unlawful discrimination (Count C), in violation of Section 2-102(A) and 6-101(A) of the Illinois Human Rights Act (the "Act"). On July 24, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On August 27, 2009, the Petitioner timely filed her Request. On October 13, 2009, the Petitioner filed her Reply to the Respondent's Response.
2. At all relevant times alleged, the Petitioner was employed as an Aviation Security Officer.
3. In February of 2006, the Petitioner was diagnosed with coronary artery disease. Thereafter, the Petitioner was granted a personal medical/disability leave of absence between April 3, 2006, and July 3, 2006. The Petitioner's leave was extended through September 30, 2006. On October 31, 2006, the Petitioner was released back to work with the restrictions that she avoid excessive driving and breathing in toxic fumes.
4. On May 4, 2007, the Petitioner filed a charge of discrimination against the Employer with the Equal Employment Opportunity Commission ("EEOC"). The Petitioner alleged the Employer had failed to accommodate her disability.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

5. On June 16, 2008, the Employer instructed the Petitioner to work mandatory overtime. The Petitioner told the Employer that she could not work mandatory overtime because of her medical restrictions.
6. On August 18, 2008, the Employer suspended the Petitioner for 15 days because she had not worked mandatory overtime on June 16, 2008.
7. In her Request and in her Reply, the Petitioner contends there is substantial evidence she was suspended on August 18th because of her disability, her sex, and in retaliation for having filed the EEOC charge in May of 2007. The Petitioner contends male and female Aviation Security Officers without her disability were treated more favorably than she was. The Petitioner also argues the "mandatory overtime" was in fact not mandatory and was not an essential function of the Petitioner's job.

CONCLUSION

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

As to Count A, a *prima facie* case of disability discrimination requires evidence that: (1) the Petitioner have a disability within the meaning of the Act; (2) the Petitioner's disability is unrelated to her ability to perform the essential functions of her job, and (3) the Employer took an adverse job action against the Petitioner because of her disability. See Illinois Department of Corrections v. Illinois Human Rights Commission, 298 Ill.App.3d 536, 540, 699 N.E.2d 143, 145-6 (3rd Dist. 1998).

The Commission finds no substantial evidence the Employer took an adverse action against the Petitioner because of her disability. The evidence shows the Petitioner was suspended for refusing to work mandatory overtime. The evidence shows that between December 18, 2007, and January 23, 2008, the Employer had also suspended six non-disabled employees for refusing to work mandatory overtime. The evidence shows the Petitioner was treated the same as her non-disabled co-workers.

As to Count B, a *prima facie* case of sex discrimination requires evidence that: (1) the Petitioner falls within the protected class; (2) the Petitioner was qualified for the job or is satisfying the normal work requirements of the job; (3) the Petitioner was subjected to an adverse action, and (4) the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist 1994).

In this case, the Commission finds no substantial evidence of sex discrimination because in December 2007 and January 2008, the Employer suspended four male employees for refusing to work mandatory overtime.

Finally, as to Count C, the Commission finds no substantial evidence of retaliation. A *prima facie* case of retaliation requires evidence that: (1) the Petitioner engaged in a protected activity; (2) the Employer committed an adverse action against the Petitioner, and (3) a causal connection existed between the protected activity and the adverse action by the Employer. Welch v. Hoeh, Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd dist. 2000). A causal connection will be inferred if the period of time between the protected activity and the adverse action is sufficiently short. Mitchell and Local Union, 146, 20 Ill.HRC Rep. 101, 110-11 (1985) (six months was too remote to establish connectedness).

There is no question that the Petitioner engaged in a protected activity when she filed a charge with the

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Page 3 of 3

In the Matter of the Request for Review by: Carol P. Hill-2009CF0538

EEOC on May 4, 2007. However, the Petitioner was suspended fifteen months after she engaged in the protected activity. As such, the period of time between the protected activity and the adverse act was too remote to raise an inference of a retaliatory motive.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and City of Chicago Department of Aviation, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 10th day of March 2010.

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Yonnie Stroger